

Third, the Commission's report to Congress and any proposed rules resulting from the Inquiry should differentiate between newly produced taped programming and live programming. Live programming is expensive to produce and relatively expensive to caption. Even established networks that have in-house closed captioning staff often contract out for third party captioning of live events. Therefore, the Commission should consider proposing an exemption for live programming (or categories of live programming) from closed captioning mandates.

Fourth, as Congress recognized, the audience watching a program is an important factor in determining whether an exemption is warranted. Viewership is lowest during overnight and weekday daytime dayparts. Therefore, we believe that the Commission should consider daypart exemptions.

Finally, the Commission should also consider whether certain types of programming should be exempt. For example, certain programs are textual in nature, and the content of the program is easily understandable without the need for closed captioning. Programming such as preview channels, home shopping programming and weather programming might properly fall into this category. In addition, there are programs -- such as live courtroom programs -- that already contain a high degree of textual material and for which closed captioning would provide duplicative information. Other relatively short programs, such as interstitial and short form programs (such as music videos), promotional matter, and commercials, may be inappropriate for captioning. Interstitial programs and other types of short form programs are typically recut and reconfigured

during their airing on cable networks. The need to make frequent changes to these programs also means a significantly compressed schedule for producing this short form programming. And unlike long form programs, which typically will be rerun on a number of different media, interstitial programs -- such as music videos, promotional material, and the like -- have a short shelf life. Captioning such programming would not only add significantly to its cost, but also would be impractical.

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As described above, even without a mandate, the cable industry has provided a significant and increasing amount of captioned material. These efforts will continue in the absence of governmental requirements, where captioning will not impose unreasonable financial burdens. But the Commission's Report should recognize that there are reasons why certain programs cannot be economically captioned, and should fashion exemptions with this in mind.

B. Transition

The Notice also seeks comments on the appropriate transition period to any closed captioning requirements.³³ As provided in the 1996 Act, any mandates that the Commission imposes must be phased in over an appropriate time period. There are currently few facilities for closed captioning, and any significant increase in captioning needs will soon overwhelm existing resources. More time is needed to develop in-house capabilities and to allow for new technologies that will facilitate closed captioning.

³³ Notice at ¶34.

One approach to phasing in any new mandates would be to require program networks that are subject to any new requirements to achieve captioning of a certain percentage of their program line-up per year. Full captioning of newly produced, non-exempt programming should be achieved over a multi-year period, in order to account for program budgets that are set well in advance, scheduling and other considerations.

CONCLUSION

The cable programming industry is committed to serving the hearing impaired community, and has made significant strides in the absence of government mandates to do so. The cable programming industry is also exploring the feasibility of providing programming enhancements to serve the visually impaired audience.

In considering any new requirements, we urge the Commission to balance the legitimate goal of improving the accessibility of video programming to people with disabilities with the real-life challenges and costs such requirements will have on the industries affected. The Commission must recognize, as the statute does, the differences between captioning new materials and previously published materials. The Commission must also take into account the unique challenges faced by the diverse cable programming industry. This industry's success is based, in large part, on providing a wide variety of programming aimed not just at the broad television audience, but also at smaller niche markets. In addition, the cable industry provides a wide variety of types of programming including continual live coverage of events, classic movies and series, and an array of short-form programming, some of which are more difficult and more costly to caption.

We urge the Commission to develop rules and timetables that adequately consider all of these factors.

Respectfully submitted,



Daniel L. Brenner
Diane B. Burstein
1724 Massachusetts Avenue, NW
Washington, DC 20036
(202) 775-3664

Jill Lockett
Vice President, Program Network
Policy

Cynthia Brumfield
Vice President, Research and
Policy Analysis

David Pierce
Director, Research and Policy
Analysis

Counsel for the National Cable
Television Association, Inc.

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ATTACHMENT A

**AMOUNT OF CLOSED CAPTIONED PROGRAMMING AVAILABLE
ON THE TOP TWENTY CABLE NETWORKS
AND SIX PREMIUM CABLE NETWORKS
AS A PERCENT OF TOTAL PROGRAMMING**

<u>Daypart</u>	<u>Top 20 Basic And Six Premium Networks</u>	<u>Six Premium Networks</u>
Morning	14.19%	49.37%
Daytime	22.30	51.01
Early Fringe	27.47	54.80
Prime Time Access	37.23	60.47
Prime Time	27.31	60.49
Late News	26.17	57.21
Late Fringe	21.29	53.26
Total	23.95%	54.18%

Note: The top 20 basic networks include AMC, A&E, CNBC, CNN, C-SPAN, Discovery, ESPN, The Family Channel, Headline News, Home Shopping Network, Lifetime, MTV, Nickelodeon, QVC, TNN, TNT, The Weather Channel, USA Network, VH1 and TBS. The six premium networks are Disney, Encore, HBO, Cinemax, Showtime and The Movie Channel.

Source: Derived from data supplied by TV Guide. This data included the amount of closed captioned programming available both in terms of total hours and as a percent of total programming each day between 7:00a.m. and 1:00a.m. during the three month time period from November 5, 1995 through February 8, 1996.